

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.

★ DEC 22 2010 ★

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

— against —

GRYPHON HOLDINGS, INC., et al.,

Defendants.

MEMORANDUM BROOKLYN OFFICE
AND ORDER

10-CV-1742

Appearances:

Joseph Boryshansky, Alexander Janghorbani, and Bohdan Ozaruk, New York, N.Y, for plaintiff Securities and Exchange Commission.

Kenneth B. Falk, Falk & Associates, LLC, Woodbridge, N.J., for defendants Kenneth E. Marsh and Gryphon Holdings, Inc.

JACK B. WEINSTEIN, Senior United States District Judge:

The Securities and Exchange Commission ("SEC") brings civil claims against defendants Kenneth E. Marsh and Gryphon Holdings, Inc. ("Gryphon") (collectively, defendants) for violation of sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2); section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b); and Rule 10b-5, 17 C.F.R. § 240.10b-5. A claim for control person liability under section 20(a) of the Exchange Act, 15 U.S.C. § 78j(b), is brought against Marsh. Defendants are subject to a preliminary injunction and an asset freeze order issued April 20, 2010, as amended May 14, 2010.

Marsh and Gryphon move for summary judgment and for vacation of the injunction and order freezing defendants' assets.

The SEC alleges that Marsh and Gryphon, the business he operated, defrauded their clients by fraudulently selling investment advice and a newsletter. Allegedly, the conspirators used false names, credentials, and addresses, and lied about their investment expertise and the nature of their research. Marsh is also a defendant in a criminal case, *United States v. Marsh*, (No. 10-CR-480), arising from the same allegations.

Evidence has been adduced from which a jury could find the bases for the SEC's claims: that defendants acted as investment advisers; that defendants willfully made material representations in connection with the purchase and sale of securities to defraud their clients; that defendants committed their fraud through means of interstate commerce or the mails; that Marsh directed and controlled Gryphon; and that Marsh directly induced many of Gryphon's fraudulent acts.

The motion for summary judgment is denied. Defendants' arguments for vacating the preliminary injunction and asset freeze order are rejected.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jack B. Weinstein", is written over a horizontal line.

Jack B. Weinstein
Senior United States District Judge

Date: December 21, 2010
Brooklyn, New York